

MONTHLY REPORT FROM THE USAID SUPPORT FOR TRADE ACCELERATION PLUS PROJECT

APRIL 2013

Sub IR 1.1: Effective Capacity to Meet Existing Trade Agreement Obligations

Customs Risk Management

Former senior US Customs official, Janet Labuda conducted a week-long training program on risk management at the request of the Vietnam General Department of Customs in Hanoi. The training included such topics as use of compliance measurement as a risk management tool, how to analyze data and create profiles, developing special enforcement operations to validate risk assessments and principles and approaches to partnership/AEO/trusted trader programs as a risk management tool. The course attracted 27 participants, including 7 from distant provinces. Ms. Labuda stressed the importance of identifying priority trade issues for Vietnam Customs. The likely requirements of the Trans Pacific Partnership Free Trade Agreement, especially with regard to intellectual property rights protection were also discussed at length. The participants said that some effort to identify priority trade issues has been made already, but it has not been thoroughly thought out and it is not updated regularly.

Trans Pacific Partnership and Its Impact on Vietnam

To increase public awareness and support for the Trans Pacific Partnership Free Trade Agreement, USAID STAR Plus organized a series of events with Professor Peter Petri of Brandeis University during the week of March 25 to 29. Professor Petri and two colleagues, one in China and one at Johns Hopkins University (Bologna, Italy campus) have developed a computerized general equilibrium model to forecast the likely impact of the TPP on Vietnam's economy. Dr. Petri visited Vietnam in 2012 to present his research findings, but he has refined his analysis since then and added new information related to the expansion of the TPP. His new research revealed the following:

- The TPP will generate large global benefits (\$223 billion increase in incomes, \$305 billion increase in exports, \$315 billion increase in imports, \$225 billion increase in FDI).
- Vietnam would enjoy a \$26.2 billion increase in incomes under the current scenario.
- If Japan joins the TPP, Vietnam's income gains would rise to \$35.7 billion.
- Income gains to the United States are predicted to reach \$23.9 billion with 11 countries participating in the TPP, but the gains would rise to \$76.6 billion if Japan joins the TPP.
- Vietnam will have to overcome difficult issues related to rules of origin, labor, intellectual property rights and environment.
- Vietnam stands to gain from membership in the TPP than any other country.

Prof. Petri took part in five workshops during his most recent visit to Vietnam. These included two public events with the Ministry of Trade and Industry (MOIT) for policy makers and businesses in Hanoi and Ho Chi Minh City, a technical workshop with the

Ho Chi Minh National Academy of Politics and Public Administration, roundtable discussions with faculty, students and researchers from the Foreign Trade University (FTU) and the WTO Center of the Ho Chi Minh City People's Committee. Dr. Petri also met with a large Hong Kong-based textile investor, Virginia Foote of the U.S.-Vietnam Trade Council in Hanoi and Viet Hang Corporation, a large, vertically integrated textile company in Ho Chi Minh City.

The events attracted large audiences and they generated significant media coverage. In addition to the press at the MOIT events, Dr. Petri taped an interview on a finance and business cable television channel, FBNC, which was broadcast on April 10, 2013. The Public Affairs Section of the U.S. Consulate in HCMC arranged an in-depth interview with a journalist from the Tuoi Tre Newspaper in their Diamond Plaza facility. One of Professor Petri's main messages was that the TPP, as currently structured, would generate enormous benefits for all of the participants. The likely inclusion of Japan, Thailand, the Philippines, and, perhaps, Indonesia, would multiply those benefits tremendously. His model forecasts increases in GDP of 7.7% for Vietnam with 11 countries participating. If Japan joins the TPP, as expected, that figure would increase to 10.5% of GDP, making Vietnam the largest beneficiary of the TPP in percentage terms.

Nevertheless, some groups expressed concerns about the TPP. Representatives of the textile and apparel industry expressed concern that their industry was not ready for the "Yarn Forward" requirements the United States has been pressing in the negotiating rounds. They expressed concern that the cost of additional record keeping and reporting requirements would outweigh the benefits of reduced tariffs. They said that major U.S. buyers and their suppliers have expressed little interest in investing in Vietnam. They said that the yarn forward requirement imposed on Japan has attracted only very modest amounts of new foreign investment. Others expressed concern that the labor provisions could lead to higher labor costs and increased unemployment, stronger IPR protections could limit access to medicines, software and other important results of investment (by other countries) in science and technology. Investor-state dispute settlement mechanisms also emerged as major concern. Professor Petri observed that in Japan, 80% of the objections to the TPP are from elderly rice farmers who account for 1% of total trade. He also cited the case of 1,300 people in Maine that occupy minimum wage jobs in the New Balance Shoe Company. He said the cost to consumers of protecting each of these minimum wage jobs was approximately \$1 million per year. He stressed that, while some sectors or individuals would be harmed by the TPP, it was important to not lose sight of the tremendous benefits that would accrue to millions of people.

A number of businesses expressed unhappiness with MOIT over the secrecy with which the negotiations are being conducted. They feel that it severely hinders their ability to prepare for a post-TPP business environment. Overall, though, the reaction to the TPP was overwhelmingly positive. Fred Burke said the Amcham in HCMC is preparing to launch a major TPP information campaign and he said he intends to make good use of the materials prepared for Professor Petri's tour.

Hague Conference

On April 10, 2013, Vietnam became an official member of the Hague Conference, the most prestigious organization in the field of international justice, often called the “WTO of international law.” The Hague Conference is an intergovernmental organization which was founded in 1893 to serve global demands for cross-border solutions to disputes or transactions in civil and commercial matters. It now has 72 member countries plus the European Union, representing over 4.5 billion people. In addition, 70 other countries are parties to one or more Hague Conventions. In terms of international trade and investment, some of the most important issues the Hague Conference deals with are choice of court agreements in international contracts, recognition and enforcement of judgments, international contracts, legalization of documents, torts (international product liability), trusts and securities held with an intermediary. Vietnam’s admission to the Hague Conference represents the culmination of a USAID STAR Plus effort begun in early FY 2012 to help the Ministry of Justice decide whether or not to apply for membership and, subsequently, to become a full member.

Benchmarking of Viet GAP (Vietnamese Good Agricultural Practice)

At the request of the Ministry of Agriculture and Rural Development, Directorate for Fisheries (D-Fish), under MARD, on 22-23 April 2013, USAID STAR Plus and the International Trade Center (Geneva) organized an intensive 2-day workshop in Can Tho on “Standards Map and Benchmarking Standards for Aquaculture and Agriculture Practices”. The workshop presented the work of the ITC in the area of International Trade and Voluntary Standards and taught participants a methodology to benchmark Good Agricultural Practices (GAP) standards, especially VietGAP, using the ITC Standards Map database and tools. Fifty-three people from Can Tho and surrounding provinces attended the workshop. They included government officials, enterprises, universities, certification bodies, VCCI, agriculture promotion organizations and a regional aquaculture projects. The workshop was highly interactive, combining presentations and group exercises with hand-on exercises on accessing and using Standard Map and Standards Benchmarking Tool. VietGAP, Metro Requirements Standard and harmonization of GAP standards in ASEAN countries were also presented and attracted a great deal of interest from the participants. D-Fish said they highly appreciated the workshop and expressed a strong desire for further cooperation with USAID.

Sub IR 2.2 Improved Judicial Capacity to Effectively Enforce Commercial Law and Mitigate Disputes

Software Piracy

On April 9, USAID STAR Plus met with representatives of the Business Software Alliance (BSA) from China, Singapore and Vietnam. The BSA is very supportive of the “IPR Benchbook” for judges that is being developed under the USAID STAR Plus project. The project is behind schedule because the judges who were to have written several chapters have been too busy with their caseloads. Our subcontract with Baker & McKenzie has also been ended as a cost saving measure, but we are benefitting from pro bono services from several private law firms and using in-house expertise to

fill in. The BSA had high praise for the progress that has been made in the last 6 to 10 years in Vietnam. The greatest problem now, they said, is illegal copying of licensed software within an enterprise. Because this does not require large production facilities or distribution systems, it is much harder to detect. They said they feel that administrative measures are being used effectively, but what is really needed is to bring a few criminal cases against IPR violators. They said that if the maximum administrative penalty for violating IPR regulations is a few thousand dollars, many large companies will decide that it is more cost effective to pay the fine than to purchase large quantities of licensed software. If criminal penalties were imposed, however, they feel that would be an effective deterrent. They said the situation in China is almost identical to the situation in China. They feel that remarkable progress has been made in China over the past four years, but without criminal penalties for IPR violations, there is no strong deterrent. The principal obstacles to criminal penalties for IPR violations are the reluctance of rights holders to press their case with law enforcement agencies and the lack of a clear definition of what is meant by “commercial quantities” of goods. The BSA officials said that when the IPR Benchbook has been completed and distributed to judges throughout the country, they want to bring criminal charges against a few, carefully chosen violators to establish a clear precedent that IPR violators may risk imprisonment for their crimes.

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Intellectual Property Rights Enforcement

On April 12 and 13, the Inspectorate of the Ministry of Science and Technology, in cooperation with USAID STAR Plus, organized a workshop in Ninh Binh on prosecution of IPR crimes. Representatives from all IPR enforcement agencies (OOG, SPC, SPP, MOJ, etc.) attended the workshop along with representatives of international law firms and the Business Software Alliance. The participants agreed that IPR crimes are not punished due to the absence of clear explanations of some provisions of the Penal Code. The current circular governing the IPR section of the Penal Code was drafted seven years ago and it is deficient in many respects. The participants reached agreement on a number of points, notably (1) “commercial scale” should be interpreted as covering both infringements for business purposes and non-business purposes as long as they adversely affect the rights holders and (2) there needs to be greater clarity in the methods used to determine the quality of infringing products so that it is sufficiently flexible and feasible to use in prosecution. A detailed report on the workshop conclusions was sent to the drafting committee for the criminal circular and all relevant agencies to they can incorporate the recommendations in their next draft of the circular.

Sub IR 2.4 Increased Transparency and Public/Private Sector Participation in the Development and Implementation of Business Regulations

Revised Law on Customs

On April 16, USAID sponsored a workshop in Hanoi for 150 people from businesses, Customs and the press. Vice Minister Do Hoang Anh Tuan of the Ministry of Finance, Vice Chairman Pham Gia Tuc of VCCI and Joakim Parker, USAID Mission

Director, chaired the workshop. The MOF said that the revisions were necessary to meet future international commitments (FTAs, ASEAN, TPP, and the Kyoto Convention), reduce red tape and to make it easier for businesses to operate in Vietnam while ensuring better compliance. Customs said their goal is to become the third ranked country in the region by 2020 in terms of efficiency, clearance time and business friendliness. About 20 people provided detailed comments on the draft law. Many of their suggestions were immediately accepted by Vice Minister Tuan. Of the three issues raised by USAID STAR Plus, Vice Minister Tuan confirmed that 87% of declarations are now done with advance filing. He agreed that advance rulings should be posted on the web and that the law should have provisions on a response period for advance rulings. Later, Customs confirmed that they are aware of the need to providing for a validity period for advance rulings and they are waiting for the TPP negotiations to conclude before inserting it in the Law. The Hanoi program was followed by a similar workshop in Ho Chi Minh City on April 18. It was organized by the Ministry of Finance, the General Department of Vietnam Customs (GDVC), the Vietnam Chamber of Commerce and Industry (VCCI) and USAID STAR Plus. The event was attended by representatives of VCCI, several southern Customs bodies, representatives of the U.S. Consulate General and more than 100 companies, associations and law firms. In total, 208 people participated. Deputy General Director of GDVC, Mr. Vu Ngoc Anh, and Deputy Director of VCCI HCM City, Mr. Tran Ngoc Liem chaired the event. DDG Vu Ngoc Anh pointed out the necessity of amending a number of articles of the Customs Law to bring them into line with existing and anticipated international treaty obligations. The amended Customs Law will facilitate the adoption of modern customs management practices. It will also help attract new foreign investment, and improve the competitiveness of businesses. The private businesses and law firms had many comments on the draft Customs Law. They covered a range of topics, but the majority focused on documentation requirements and procedures, the priority regime for enterprises, customs supervision, customs inspection and supervision. After listening to the comments, Deputy General Director Vu Ngoc Anh said the drafting committee greatly appreciates all the comments from the participants and they will be given careful consideration when they prepare the next draft of the Law. He said their goal remains to ensure that the amended Customs Law will achieve three main objectives: (1) to meet the achieve the standards required by new international commitments; (2) to facilitate import and export activities; (3) and to ensure that Customs authorities implement risk management principles consistently.

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Codification

On April 22, the Ministry of Finance sent a formal request for assistance to USAID STAR Pus to help them with the task of consolidation of all the laws and regulations that fall under the Ministry. Consolidation is an important step toward codification. The Ministry's long-term goal is to codify all of their legal normative documents, just as the State Bank of Vietnam has done. The Ministry is very impressed by the pilot program with the State Bank of Vietnam and they would like USAID STAR Plus and SBV representatives to share the experiences and lessons learned from the pilot effort. The Ministry of Finance has an on-going training program for their legal staff to equip

them with the skills they need to undertake a major codification program. The date and venue for the training is to be determined, but it will probably take place in the last week of May. Officials from the MOF said they are aware of the guidance contained in the draft circular on codification prepared by the Ministry of Justice. They said that if they were to follow those instructions, they could not succeed in accomplishing their objective.

Upcoming Events:

- **Lecture at the Ho Chi Minh Academy by Professor William Frasure.** Topic is “International relations in the Asia-Pacific region; roles of big countries such as the U.S., China, Russia, Japan and international organizations such as ASEAN and East Asia Community.” Date: May 17. Time: 0830 to 1130.
- **Regional workshop on Customs-to-Business partnership program** with a special focus on AEO program, May 27-29 in Dalat. Note: Major funding for this program will come from the ASEAN Single Window Project implemented by Nathan Associates.
- **National workshop on Customs-to Business Partnerships**, May 30-31, 2013 in Dalat. This may be followed by consultations on Saturday and Sunday (June 1 and 2). Note: Major funding for this program will come from the ASEAN Single Window Project implemented by Nathan Associates.
- **Ministry of Foreign Affairs (MOFA) Workshop on Global Economic Integration** for 18 mid-career diplomats and staff of the Central Committee of the Communist Party. The program will include one week in Hanoi and two weeks in the USA. It will begin in Hanoi on May 20, 2013.
- **Workshops to introduce the concept of codification** to other state agencies. Date and venue are to be determined.
- **Study Tour to Washington, D.C** for General Department of VN Customs. June 17-21, 2013.
- **Presentation of USAID STAR Plus benchmarking study** of Customs Transparency and Internet Publication Capacity. Date: May 10, 2013 at VN Customs headquarters in Hanoi.